

WOMEN AND THE TAX WORKING GROUP

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ABSTRACT

The impact of the tax system on women and men is not the same. Women earn less than men, have lower levels of savings, and derive more of their income from wages than wealth. This means that progressivity is particularly important for women, and the taxation (or non-taxation) of savings and capital is particularly relevant to men.

To provide a basis for discussion of the way in which the New Zealand government's Tax Working Group ('TWG') was invited to consider the issue of gender, and how the recommendations in its final report would impact women, this article provides an introduction to the differences between men's and women's experiences of the tax system. These include the relationship of the tax system with the transfer system, and the gendered difference in treatment for non-compliance in each system.

This article examines the recommendations in the TWG's final report and explains how gender was reflected. It also critically examines the background paper, 'Taxation and Gender', that was provided to the TWG. The paper offered just one substantive point for discussion: 'Does the Group agree with the Secretariat's overall judgement that childcare costs should not be deductible?' The limitations of this focus are discussed. This article suggests that the restricted view of gender and tax in the background paper reflects a broader lack of understanding of gender issues across the New Zealand public sector. It reflects on how this situation came about and considers how it might change.

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I INTRODUCTION

The Tax Working Group ('TWG') was established by the New Zealand government in order 'to examine further improvements in the structure, fairness and balance of the tax system'.¹ In their Terms of Reference, the government outlined its objectives for the tax system, which included 'a system that treats all income and assets in a fair, balanced and efficient manner' and 'a progressive tax and transfer system for individuals and families'.² The government requested the TWG to report on four areas, including 'whether the tax system operates fairly in relation to taxpayers, income, assets and wealth' and 'whether there are changes to the tax system which would make it more fair, balanced and efficient'.³ The government also provided direction on areas that should be considered, including the changing economic environment, the potential for a capital gains tax and a progressive company tax rate, and the potential role of the tax system in delivering positive environmental and ecological outcomes. A number of areas were specifically ruled to be out of scope, including inheritance tax and 'the adequacy of the personal tax system and its interaction with the transfer system'.⁴ The stated reason for these omissions was that they were to be considered as part of a separate review of Working for Families ('WfF'), which falls under the scope of the Welfare Expert Advisory Group ('WEAG'), which was established in June 2018.⁵ The Terms of Reference for the WEAG state that they should make 'high level recommendations for improvements to Working for Families'.⁶ The transfer system is considered further in Section II, but it is sufficient to note here that despite WfF being the major tax credit for parents in paid employment, it was excluded from the TWG's reporting, as was taxation on savings and wealth passed on to the next generation.

The TWG was chaired by Sir Michael Cullen (a previous Minister of Finance) and consisted of 10 other members, from academia, advisory roles, trade unions, business, and a former senior public servant from Inland Revenue.⁷ There were four women and six men. This was in marked contrast to the 2009 Victoria University of Wellington Tax Working Group, whose 12 members, as well as the Chair, were all men.⁸ The TWG was supported by a Secretariat of

¹ 'Terms of Reference: Tax Working Group', *Tax Working Group* (Web Page, 8 March 2018) <<https://taxworkinggroup.govt.nz/resources/terms-reference-tax-working-group>>.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ 'Establishing the Welfare Expert Advisory Group', *Welfare Expert Advisory Group* (Web Page, 3 May 2019) <<http://www.weag.govt.nz/news/establishing-the-welfare-expert-advisory-group>>.

⁶ New Zealand Government, 'Terms of Reference for the Welfare Expert Advisory Group' (2018) <https://www.beehive.govt.nz/sites/default/files/2018-05/WEAG%20Terms%20of%20Reference_0.pdf>.

⁷ Tax Working Group, 'Sir Michael Cullen Welcomes TWG Members' (Press Release, 20 December 2017) <<https://taxworkinggroup.govt.nz/resources/sir-michael-cullen-welcomes-twg-members>>.

⁸ Victoria University of Wellington Tax Working Group, *A Tax System for New Zealand's Future* (Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, January 2010) 7 <<https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/pdf/tax-report-website.pdf>>.

officials from Treasury and Inland Revenue — in keeping with their joint responsibility for tax policy advice — and an independent advisor.

This article is structured as follows. Section II considers the impact of the tax and transfer system on both women and men. As women earn less than men, have lower levels of savings, and derive their income more from wages than wealth, the ways men and women interact with the tax system are different. The gendered difference in treatment for non-compliance in each system is discussed. Section III considers the TWG's final report, and outlines some of the gender impacts of the recommendations. Section IV considers how a narrow focus (on the deductibility of childcare costs) might have arisen. It documents the decline in gender analysis skills in the New Zealand public sector and explores how this might be remedied. Conclusions are presented in Section V.

II WOMEN, TAX AND TRANSFERS

Any policy is likely to impact different groups in different ways — often deliberately so, in the case of any redistributive or means-tested policy measure. However the 'apparent neutrality' of the tax system,⁹ and therefore the tax policies that combine to make the tax system, is held as a long-standing and firm principle.¹⁰ This view is inconsistent with a significant body of literature, and is discussed in this part of the article.

A Women and Tax

Tax law reveals much about our society, 'since what we tax and how we tax reflect a multitude of philosophical, social, and political choices'.¹¹ Tax policy is 'affected by a wide range of political, economic, cultural, institutional, and historical factors',¹² some of which include discrimination against women.¹³ These factors may have been incorporated into the *Convention on the Elimination of All Forms of Discrimination against Women*,¹⁴ when it states that tax policies must consider 'a more substantive concept of equity that recognises the need to transform traditional gender roles in society that are presently inequitable'.¹⁵

⁹ Lois Harder, 'Child Care, Taxation and Normative Commitments: Excavating the Child Care Expense Deduction Debate' (2004) 73 *Studies in Political Economy* 89, 89.

¹⁰ Nancy C Staudt, 'Taxing Housework' (1995–6) 84 *Georgetown Law Journal* 1571, 1589.

¹¹ Marjorie E Kornhauser, 'Through the Looking Glass with Alice and Larry: The Nature of Scholarship' (1998) 76 *North Carolina Law Review* 1609, 1609.

¹² John L Campbell, 'The State and Fiscal Sociology' (1993) 19 *Annual Review of Sociology* 163, 164.

¹³ Kathleen Barnett and Caren Grown, *Gender Impacts of Government Revenue Collection: The Case of Taxation* (Commonwealth Secretariat, 2004) 26.

¹⁴ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981).

¹⁵ Imraan Valodia, 'Conclusion and Policy Recommendations' in Caren Grown and Imraan Valodia (eds), *Taxation and Gender Equity: A Comparative Analysis of Direct and Indirect Taxes in Developing and Developed Countries* (Routledge, 2010) 299, 301.

Alstott suggests that tax law has ‘institutional complexity’.¹⁶ Evidence in New Zealand of this complexity includes a dedicated forum for hearing tax disputes (the Taxation Review Authority) and specialist tax qualifications, such as a Chartered Accountant or a Master of Taxation. The risk associated with such complexity is that the potential for broad debate on tax issues is significantly reduced. For Philipps, the tax system is ‘dominated by expert knowledge’ to an extraordinary degree, which ‘inhibits critical conversation about tax laws by those defined as nonexperts’.¹⁷ For example, experts advise the parliamentary Finance and Expenditure Select Committee when discussing tax legislation, and the Minister of Finance has a tax advisor seconded to his office from Inland Revenue. The TWG also had an independent advisor.

To open this place of ‘neutral’ complexity to feminist critique is not without challenge. Philipps notes how the contrast between the perceived rational basis of tax law and consideration of women’s caregiving work, ‘with all its bodily, emotive, and expressive associations’, can result in making tax law ‘particularly resistant’ to feminist critical tax theory.¹⁸ A second consideration is the number of women involved in making decisions on tax and other political matters. Women have been described as the most under-represented social group in Western politics.¹⁹ Worldwide, there are fewer women than men in government, both as senior public servants designing policy, and as politicians making decisions on implementing policy. According to United Nations Women, as at November 2018, only 24 per cent of national parliamentarians were female, with less than 10 per cent female representation in 29 countries and none at all in four countries.²⁰ In Norway, the figure is 41 per cent,²¹ reflecting voluntary quota systems introduced by different parties during the 1970s and 1980s.²² This approach has been described as a ‘systematic implementation of gender recognition measures’, and was applied at all levels of politics.²³ In New Zealand, only one major party (Labour) has a quota system in place. Stotsky suggests that increasing the number of women in political roles may lead to increased demand for redistributive policies and public insurance.²⁴ Kornhauser

¹⁶ Anne L Alstott, ‘Tax Policy and Feminism: Competing Goals and Institutional Choices’ (1996) 96(8) *Columbia Law Review* 2001, 2004.

¹⁷ Lisa C Philipps, ‘Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy’ in Anthony C Infanti and Bridget J Crawford (eds), *Critical Tax Theory: An Introduction* (Cambridge University Press, 2009) 46, 47.

¹⁸ *Ibid.*

¹⁹ Brodie quoted in Gillian Pascall, ‘Citizenship — A Feminist Analysis’ in Glenn Drover and Patrick Kerans (eds), *New Approaches to Welfare Theory* (Edward Elgar, 1993) 113, 118.

²⁰ ‘Facts and Figures: Leadership and Political Participation’, *United Nations Women* (Web Page, June 2019) <<http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>>.

²¹ ‘Proportion of Seats Held by Women in National Parliaments (%)’, *The World Bank: Data* (Web Page, 2019) <<https://data.worldbank.org/indicator/sg.gen.parl.zs>>.

²² ‘Gender Quotas Database — Norway’, *International IDEA* (12 November 2019) <<https://www.idea.int/data-tools/data/gender-quotas/country-view/228/35>>.

²³ Randi Kjeldstad, ‘Gender Policies and Gender Equality’ in M Kautto et al (eds), *Nordic Welfare States in the European Context* (Routledge, 2001) 66, 95.

²⁴ JG Stotsky, ‘Budgeting with Women in Mind’ (2007) 44(2) *Finance & Development* 13; JG Stotsky, ‘Women at Work: Reductions in Gender Disparity Don’t Translate to Equal Opportunity’ (2013) 50(2) *Finance & Development* 8.

suggests ‘a simple proposition: a change in the gender composition of the people who make tax laws would change the content of those laws’.²⁵

Testing Kornhauser’s hypothesis would require looking at countries that had experienced an increase in women in Parliament, and see whether there had been a change in the laws passed. One potential way to undertake such research would be to examine those countries that have quotas in place, notably Norway; New Zealand also provides an interesting case study at the moment, as it is led by its third female Prime Minister and, at 38 per cent, there are more female Members of Parliament than ever.²⁶

Tax policy has a ‘special interest’ for women, because they generally earn less than men and so benefit from a progressive tax system. Also, their income is disproportionately likely to come from wages rather than wealth, so they are unfairly penalised when income from wages is taxed more heavily than income from wealth.²⁷ Women live longer than men but have less savings, and in some countries the most costly welfare benefits are payments for families raising children, on which women rely heavily.²⁸ In countries where the aged pension is linked to the recipient’s tax contributions, women are particularly affected by the fact that household labour is not taxed, as that restricts their access to these ‘critical resources’.²⁹ In New Zealand, women are the majority of welfare beneficiaries,³⁰ and have lower KiwiSaver balances than men.³¹ The difference in their salary and wages to men — the gender pay gap — contributes to the ‘feminisation of poverty’³² that we see in New Zealand.³³

B *Women and Transfers*

Tax policy issues are intrinsically related to transfers for two reasons. Transfers or welfare represent the other side of the tax and transfer system, and the tax system has been increasingly used to deliver social policy.³⁴ According to Stewart, the tax system is itself ‘a “massive

²⁵ Marjorie E Kornhauser, ‘A Legislator Named Sue: Re-Imagining the Income Tax’ (2001–2) 5 *Journal of Gender, Race, and Justice* 289, 294.

²⁶ ‘Record Number of Women MPs in New Zealand Parliament’, *New Zealand Parliament* (Web Page, 8 March 2018) <<https://www.parliament.nz/en/get-involved/features/record-number-of-women-in-new-zealand-parliament>>.

²⁷ Mimi Abramovitz and Sandra Morgen, *Taxes Are a Woman’s Issue: Reframing the Debate* (The Feminist Press, 2006) 11–12.

²⁸ Miranda Stewart, ‘Women and Tax’ in Patricia Easteal (ed), *Women and the Law in Australia* (LexisNexis Butterworths, 2010) 441, 442.

²⁹ Staudt (n 10) 1597.

³⁰ ‘Social Welfare’, *Ministry for Women* (Web Page, 22 June 2016) <<https://women.govt.nz/work-skills/paid-and-unpaid-work/social-welfare>>.

³¹ Financial Services Council, ‘KiwiSaver 2050: Pathways to the Future’ (Discussion Paper, September 2019) 19.

³² Martha E Gimenez, ‘The Feminization of Poverty: Myth or Reality?’ (1999) 25(2–3) *Critical Sociology* 336, 351.

³³ CP Kingfisher, ‘Reforming Women in the United States and Aotearoa/New Zealand: A Comparative Ethnography of Welfare Reform in Global Context’ (2001) 103(3) *American Anthropologist* 714, 732.

³⁴ See, for example, Richard M Titmuss, ‘The Role of Redistribution in Social Policy’ (1965) 28(14) *Social Security Bulletin* 14, 20.

spending program”: tax concessions can be considered as functionally equivalent in many respects to transfers, that is, expenditures’.³⁵ For Prasad, ‘tax preferences are equivalent to welfare spending’;³⁶ she observes that the two types of measures are perceived very differently — ‘the politics of tax preferences are distinct from the politics of social spending in that tax preferences are introduced with less struggle than direct welfare spending’.³⁷

In contrast to spending on welfare transfers, tax preferences or expenditures are not reported as a fiscal cost in the New Zealand Budget or government financial statements. However, since 2010, Treasury has produced a Tax Expenditure Statement as part of the Budget, and although this document is described as providing ‘additional transparency’, it only quantifies four tax expenditures and six tax credits.³⁸ Morrissey questions the adequacy of this approach.³⁹

A final point of consideration regarding the tax system, one that contrasts strongly with the transfer system, is the treatment of those who are found to be non-compliant. As identified by Marriott, these differences begin early, as welfare fraud is investigated at a higher rate than tax evasion. However, other differences exist, as ‘welfare fraudsters’ are more likely to be prosecuted than ‘tax evaders’, and those convicted of welfare fraud receive a harsher sentence than those convicted of tax evasion, for equivalent levels of financial harm.⁴⁰ These differences in treatment do not appear to reflect public opinion, as recent research in New Zealand and Australia found respondents did not hold more punitive attitudes to welfare fraud than tax evasion.⁴¹ This issue has been previously identified in New Zealand.⁴² The gendered distribution of welfare, as noted above, results in a gendered difference in detection and punishment for welfare and tax crimes.

III TWG RECOMMENDATIONS

The TWG’s interim report opened with a very brief summary of the key features of the tax system, which included two paragraphs on gender, to note that women have lower income and

³⁵ Miranda Stewart, ‘Domesticating Tax Reform: The Family in Australian Tax and Transfer Law’ (1999) 21(3) *Sydney Law Review* 453, 455.

³⁶ Monica Prasad, ‘Tax “Expenditures” and Welfare States: A Critique’ (2011) 23(2) *Journal of Policy History* 251, 251.

³⁷ *Ibid* 252.

³⁸ ‘Tax’, *The Treasury* (Web Page, 13 October 2016) 5 <<https://treasury.govt.nz/information-and-services/interest-areas/tax>>.

³⁹ Suzy Morrissey, ‘Gender Budgeting: A Useful Approach for Aotearoa New Zealand’ (Working Paper No 18/02, Treasury, New Zealand Government, April 2018) <<https://treasury.govt.nz/sites/default/files/2018-04/twp18-02.pdf>>.

⁴⁰ Lisa Marriott, ‘The Construction of Crime: The Presumption of Blue-Collar Guilt and White-Collar Innocence’ (2017) 16(2) *Social Policy and Society* 237, 237.

⁴¹ Lisa Marriott and Dalice Sim, ‘Tax Evasion and Welfare Fraud: Do Punishments Fit the Crime or the Perception of the Crime?’ (2017) 29(4) *Pacific Accounting Review* 573.

⁴² Susan St John, Catriona MacLennan, Hannah Anderson and Rebecca Fountain, ‘The Complexities of “Relationship” in the Welfare System and the Consequences for Children’ (Background Paper, Child Poverty Action Group, November 2014) 4 <<https://www.cpag.org.nz/assets/141204CPAG%20Welfare%20System%20final.pdf>>.

wealth compared to men.⁴³ It also included two comments noting that women have lower levels of savings than men. Childcare, such an important — and gendered — topic in the Secretariat's background paper,⁴⁴ was discussed, but it was not situated within a specific discussion on gender (as there was none). It was considered alongside other policy areas as part of the chapter on personal income and the future of work. The brief discussion centred on whether deductibility of childcare costs would increase the labour market participation of mothers, and how deductibility would have a greater benefit for those on a high income, compared to those on a low income.⁴⁵ TWG agreed with submitters that additional support for childcare costs is desirable, but best provided outside the tax system. Such an approach also keeps the support directed towards the child or the family, rather than the mother in particular, which avoids reinforcing a gendered concept of the care role.

The TWG's final report contained no reference to gender, nor did gender feature in the opening comments regarding distributional outcomes. This was a departure from the material in the interim report. Equity and fairness were discussed in terms of receiving the same income but facing different tax outcomes, and in terms of the difference in wealth between households. The demography of those households was not analysed. Women were mentioned as a group only once, as the most likely recipients of the recommendation to provide the KiwiSaver Member Tax Credit to the primary carer in the year of the child's birth,⁴⁶ regardless of their KiwiSaver contributions.⁴⁷

There was very little direct discussion of gender in the TWG reports. Some of the recommendations in the final report supported improvement of women's financial situation, but others supported the accumulation of wealth, which has been noted to lie mostly with men. Relevant recommendations and their effects on women are summarised in Table 1 below.

⁴³ Tax Working Group, New Zealand Government, *Future of Tax: Interim Report* (September 2018) 18 <<https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-interim-report-sep18.pdf>> ('TWG 1').

⁴⁴ Tax Working Group, New Zealand Government, 'Taxation and Gender: Background Paper for Session 12 of the Tax Working Group' (June 2018) <<https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-bg-3996764-taxation-and-gender.pdf>>.

⁴⁵ Tax Working Group, New Zealand Government, *Future of Tax: Final Report* (February 2019) 8, 49, 51, 97 <<https://taxworkinggroup.govt.nz/resources/future-tax-final-report>> ('TWG 2').

⁴⁶ It may be assumed that this would also be available to those adopting, in line with the treatment of adoption in the *Parental Leave and Employment Protection Act 1987* (NZ), but particular reference would have been helpful and inclusive.

⁴⁷ TWG 2 (n 45) 30, 31–3, 93.

Table 1: Summary of Relevant Recommendations

No	Recommendation	Effect on women
6–8, 16	Increase emissions rules or charges; congestion pricing.	More analysis would be needed but, as women use public transport more than men, ⁴⁸ the effects could be positive.
43	Remove employer’s superannuation contribution tax for KiwiSaver members earning up to NZD48,000 pa; provide the maximum member tax credit by a KiwiSaver member on parental leave, regardless of their level of contributions; increase the member tax credit; and reduce the lower portfolio investment entity rates for KiwiSaver funds.	Positive benefit because women are lower earners, with lower savings, and have a disproportionate responsibility for childcare.
50	Increase the net benefit payments to ensure beneficiaries receive the same post-tax increase as other people on the same income.	Positive benefit because women have higher rates of main benefit receipt. ⁴⁹
68	Take measures to improve data collection on wealth.	Positive contribution to discussion on taxation of wealth, which could improve distributional impacts, as men have more wealth than women.
78, 82, 83	Review periodically the charitable sector’s use of revenue to verify that intended social outcomes are being achieved; distinguish between privately controlled foundations and other charitable organisations; and amend the de-registration tax rules.	Possible indirect benefit if increased distribution of funds occurs, from which women may benefit, noting that privately controlled foundations are established by those with the most wealth.
94	Prioritise non-tax measures to help people stop smoking, rather than further raising excise rates; recognise the complex factors behind smoking, as reflected in recent Ministry of Health research into barriers affecting young	Positive effect, especially for Māori women who have the highest smoking rate (38 per cent), and pregnant women aged under 20 years (35 per cent). ⁵¹

⁴⁸ ‘Main Mode of Transport to Work on Census Day’, *Environmental Health Indicators New Zealand* (Web Page, 12 July 2018) <<http://www.ehinz.ac.nz/indicators/transport/main-mode-of-transport-to-work>> (‘EHINZ’).

⁴⁹ ‘Social Welfare’ (n 30).

⁵¹ ‘Facts & Figures’, *Smokefree* (Web Page, 5 November 2019) <<https://www.smokefree.org.nz/smoking-its-effects/facts-figures>>.

	Māori women’s ability to quit smoking. ⁵⁰	
95	Develop a clearer articulation of government goals regarding sugar consumption and gambling activity.	Possible benefits from a better understanding of men and women’s different consumption patterns of obesogenic food, and gambling. ⁵²
3	No wealth tax.	Supports the status quo in which men have more wealth than women.
88–90	No GST on financial services and no financial transactions tax.	Specific benefit for men as they utilise financial services, such as life insurance and retirement schemes, more than women. ⁵³ Similar consideration applies to a financial transactions tax.
46	Increase the bottom threshold of personal tax.	Sole parents gain the least from any change to raise the bottom threshold, ⁵⁴ and, at 84.2 per cent, this group is disproportionately represented by women. ⁵⁵
47, 48	Consider combining increases in the bottom threshold with an increase in the second marginal tax rate; reduce the abatement rate for WfF.	As women earn less than men, they are more likely to be impacted by changes to the lower brackets, and while higher earners are likely to still be better off overall, that may not be the case for those with earnings below the top of the second tax bracket. Reducing the abatement rate of WfF would benefit eligible mothers.

Some of the recommendations were equivocal. Recommendation 43 on KiwiSaver changes began with the caveat ‘depending on its priorities’, which is not otherwise included in the final report. It seems that administrative changes are viewed as something that should happen if the fiscal situation allows, but changes to directly improve women’s savings — and standard of living in retirement — are something that only *may* be considered important.

While not making a recommendation, the TWG noted that many submissions called for an increase in the top personal tax rates, in order to enable policies that would make a material

⁵⁰ ‘Insights into Māori Women Smoking’, *Ministry of Health* (Web Page, 18 October 2018) <<https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/insights-maori-women-smoking>>.

⁵² ‘The Social Report 2016 — Obesity’, *Ministry of Social Development* (Web Page, 2016) <<http://socialreport.msd.govt.nz/health/obesity.html>>; Statistics New Zealand, New Zealand Government, *Gaming in New Zealand* (May 2001) <<http://archive.stats.govt.nz/~media/Statistics/browse-categories/health/gambling/gaming-in-nz/gaming-in-nz.pdf>>.

⁵³ Suzy Morrissey, ‘Implicit Gender Bias in GST Systems’ (2017) 23 *New Zealand Journal of Taxation Law and Policy* 37, 45.

⁵⁴ TWG 2 (n 45) 19, 88.

⁵⁵ ‘2013 Census QuickStats about Families and Households’, *Stats NZ* (Web Page, 2013) <<http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/qstats-families-households/one-parent-children.aspx>>.

reduction in income inequality through the personal tax system. However, such increases were precluded by the Terms of Reference and so were not considered. This is a lost opportunity, as it could have made an impact on all those who experience income inequality, not just women, but also Māori and Pasifika peoples.⁵⁶

The TWG recommended further action in relation to the hidden economy. The largest part of the hidden economy is the unpaid domestic and care work undertaken by women. Although not a recent figure, in 1999 the value of unpaid work in New Zealand was calculated at NZD40 billion, equivalent to 39 per cent of gross domestic product ('GDP').⁵⁷ The issue of how unpaid work is systematically ignored and undervalued by conventional economic measures continues to be raised by Marilyn Waring.⁵⁸ Politicians have suggested that unpaid work should be recognised as essential to our society and economy, and that the first 'Wellbeing Budget' moves the country beyond GDP being the only measure of economic success.⁵⁹ However, the downgrade of the previous stand-alone Time Use Survey to a supplement to the New Zealand General Social Survey is likely to reduce the data available to researchers and policymakers to consider this important issue.⁶⁰

A further noteworthy point: the TWG does not recommend lowering the rate of GST or removing GST from certain products, such as food and drink, instead suggesting that low- or middle-income families would be more effectively supported through welfare transfers or personal income tax changes. The change in terminology to 'families' instead of 'households' or 'earners' (used in discussion of personal income tax) is notable. As the unit of study is a difficult issue in tax, terminology is generally carefully considered, and family is not a frequently used term. Its use here, particularly in relation to shopping for food items, risks projecting a traditional image of 'family life' that may not reflect reality for many people.

IV DISCUSSION

This part of the article discusses the insufficient consideration of gender by the TWG, why this reflects general government practice, and what might be done to rectify it.

⁵⁶ Tax Working Group, New Zealand Government, 'Distributional Analysis: Background Paper for Session 5 of the Tax Working Group' (March 2018) 15 <<https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-bg-distributional-analysis.pdf>> ('TWG 3').

⁵⁷ Matt Morris, 'Unpaid Domestic Work — The Importance of Unpaid Work', *Te Ara — the Encyclopedia of New Zealand* (Web Page, 11 March 2010) <<https://teara.govt.nz/en/unpaid-domestic-work/page-1>>.

⁵⁸ 'Marilyn Waring: Still Counting the Value of Women's Unpaid Work', *Sunday Morning* (Radio New Zealand, 16 December 2018) <<https://www.radionz.co.nz/national/programmes/sunday/audio/2018675816/marilyn-waring-still-counting-the-value-of-women-s-unpaid-work>>.

⁵⁹ Julie Anne Genter, 'A Chance to Recognise Unpaid Work' (Press Release, New Zealand Government, 8 March 2019) <<https://www.beehive.govt.nz/release/chance-recognise-unpaid-work>>.

⁶⁰ 'Household Surveys Programme 2018–22 (Third Edition)', *Stats NZ* (Web Page, 3 September 2018) <<https://www.stats.govt.nz/methods/household-surveys-programme-2018-22-third-edition>>.

A When I Say 'Gender', Do You Say 'Children'?

In September 2018, the TWG released its interim report,⁶¹ along with a series of background papers that the Secretariat had prepared on the various topics of discussion. Gender was discussed at Session 12 in June 2018 and, as for other topics, a dedicated background paper, 'Taxation and Gender', was prepared for that meeting. The background papers varied in size and scope, but all had a cover sheet outlining the purpose and key points for discussion, along with recommended actions.

The 'Taxation and Gender' background paper covered three topics, as well as the gender-based submissions received from the public consultation. The topics were: the gendered distribution of income and wealth; childcare costs; and tax compliance (although this was just two paragraphs). The cover sheet raised just two discussion points: 'Does the Group agree with the Secretariat's overall judgement that childcare costs should not be deductible?' and 'Is there any further information or advice that the Group would like?'⁶² It was much briefer than for other topic areas, and the Secretariat's focus on childcare costs merits some consideration.

The chapter titled 'Impact of childcare costs on women's ability to participate in workforce' discusses women's labour market participation rates, childcare costs, and how the *Income Tax Act 2007* (NZ) ('the Act') operates to make them non-deductible. The impact of making childcare deductible is assessed with respect to equity, efficiency, cost, and compliance/administration considerations, which we recognise as commonly used criteria for assessing tax policy. However, tax is not gender neutral, so these criteria may benefit from feminist critique to determine if they remain appropriate for use. Against these criteria, the conclusion was drawn that childcare costs should not be deductible, and instead options for supporting middle- and lower-income families with childcare costs were suggested. These included a new tax credit, the existing WfF tax credit, and existing subsidies such as OSCAR (Out of School Care and Recreation) and 20 hours funded early childhood education (both paid to the childcare provider). Drawing on Bacchi's WPR ('What's the problem represented to be?') approach,⁶³ a solution of a subsidy represents the 'problem' as expensive childcare services, which some parents need financial assistance to access. It focuses on women and their interaction with the labour market and ignores any other experiences they may have. However, the tax system impacts many aspects of our lives, and is different for women and men because their experiences differ.

Economic, transport and health examples are illuminating. As women earn less, and have less savings and wealth, the tax concessions (lack of taxation) that apply to capital gains, gifts and inheritance benefit men more than women. As women have a higher use of public transport than men,⁶⁴ any tax concessions for private vehicles benefit more men, and any changes that impact public transport impact women more than men. In a time of technological change, and increasing use of environmental taxes, tax choices can have gendered impacts. Finally, women have different experiences under the two-part health service in New Zealand. Men and women are both eligible for healthcare from Ministry of Health providers, such as GPs and hospitals,

⁶¹ TWG 1 (n 43).

⁶² TWG 3 (n 56).

⁶³ Carol Bacchi, *Analysing Policy: What's the Problem Represented to Be?* (Pearson Education, 2009).

⁶⁴ EHINZ (n 48).

funded through general taxation. However, the Accident Compensation Corporation ('ACC') system, provides gendered services. As Duncan notes, the health conditions most likely to affect workers in female-dominated occupations are excluded from coverage under the scheme.⁶⁵ These conditions include stress-related illnesses (mental illnesses, depression and anxiety) arising from psychosocial hazards such as bullying, harassment, occupational violence, workload stress and fatiguing care demands.⁶⁶ ACC is funded through employer, employee and motor vehicle levies, and through an appropriation from general taxation (for non-earners). Any decisions on funding Ministry of Health providers or ACC levies or appropriations have gendered implications.

B How Did We Get Here?

We arrived here through a lack of skills, resources and commitment, all of which are related and dependent on various factors across the public sector and Parliament. There is a lack of gender analysis skills in the New Zealand public sector at present because they have not been required or requested in recent years.

For gender analysis to be included in policy analysis there has to be political will. From 2002, papers for the Cabinet Social Equity Committee required a Gender Impact Statement.⁶⁷ However, with the change of government in 2008, the committees were changed, and the requirement for a Gender Impact Statement was not carried over. The change of government in 2017 has not resulted in a return to their use.

Individual ministries could include gender analysis as part of their policy work, but there has been little evidence of this. Curtin observes that there has been little negative implication for agencies that fail to conduct gender analysis.⁶⁸ If a Ministry or analyst did want to undertake gender analysis, it is unlikely they would find any tools or guidance, either within their Ministry or at the Ministry for Women ('MfW'). Until recently, the MfW website had no resources for undertaking gender analysis. The focus of the Ministry's activities has changed over the years. While its original internal organisational design may have been 'explicitly inspired by feminist thought and practice', this is no longer the case.⁶⁹

Other, more recent resources are available to help policy analysts understand different population groups. The Health Equity Assessment Tool, which was released in 2008,⁷⁰ has a strong focus on improving health outcomes for Māori. A Child Impact Assessment Guide was

⁶⁵ Dawn Duncan, '50 Years On from the Woodhouse Report' (2019) 15(1) *Policy Quarterly* 54, 56.

⁶⁶ *Ibid* 56.

⁶⁷ Cabinet Office, New Zealand Government, 'Gender Analysis — Inclusion of Gender Implications Statement in All Submissions to the Cabinet Social Equity Committee' (Cabinet Office Circular No CO (02) 2, 6 March 2002) <<https://dpmc.govt.nz/publications/co-02-2-gender-analysis-inclusion-gender-implications-statement-all-submissions-cabinet>>.

⁶⁸ Jennifer Curtin, 'The Evolution of Gender Equality Policy in New Zealand' in Michael Hill (ed), *Studying Public Policy: An International Approach* (Policy Press, 2014) 116, 121.

⁶⁹ Jennifer Curtin and Katherine Teghtsoonian, 'Analyzing Institutional Persistence: The Case of the Ministry of Women's Affairs in Aotearoa/New Zealand' (2010) 6 *Politics and Gender* 545, 554.

⁷⁰ L Signal, J Martin, F Cram and B Robson, *The Health Equity Assessment Tool: A User's Guide* (Ministry of Health, New Zealand Government, June 2008) <<https://www.health.govt.nz/system/files/documents/publications/health-equity-assessment-tool-guide.pdf>>.

released in 2018 by the Ministry of Social Development.⁷¹ The Department of the Prime Minister and Cabinet established the Policy Project to build ‘a high performing policy system that supports and enables good government decision making’.⁷² However, there is no guidance on gender analysis.

The State Services Commission (‘SSC’) is also responsible for improving policy analysis skills. One of the roles of the State Services Commissioner is to advise on ‘the design and capability of the State services’.⁷³ However, the SSC neither provides resources to undertake gender analysis, nor requires such analysis to be undertaken.

In this light, it is not surprising that there is a lack of gender analysis skills in the public sector, or that the background paper on gender for the TWG was not more detailed.

C How Can We Move Forward?

Unless outcomes are examined from a gender perspective, it is unlikely that much will occur to improve them. Over recent years, the gender pay gap has received a large amount of attention, particularly when Statistics New Zealand releases updated earnings figures, and when private companies and state organisations release remuneration details. And the gender pay gap has fallen (although there is plenty more to be done). The transparency of making such information public provides impetus for action. Without similar focus on the gender implications of policy initiatives we are unlikely to see a change in which policies proceed.

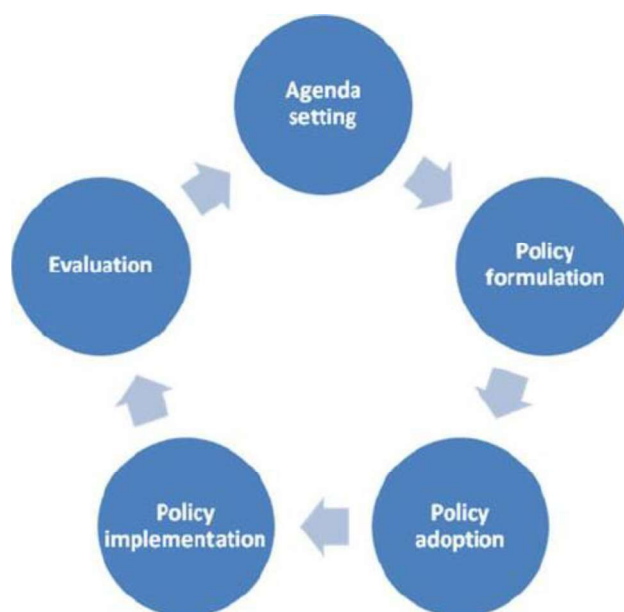
Gender analysis skills need to be developed. This requires training and recognition of gender analysis as a core element of policy analysis — not a ‘nice to have’ but a ‘must have’.

⁷¹ Ministry of Social Development, New Zealand Government, *Improving the Wellbeing of Children and Young People in New Zealand: Child Impact Assessment Guide* (July 2018) <<https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/resources/child-impact-assessment-guide-jul18.pdf>>.

⁷² ‘The Policy Project’, *Department of the Prime Minister and Cabinet* (Web Page, 28 June 2019) <<https://dpmc.govt.nz/our-programmes/policy-project>>.

⁷³ ‘State Services Commissioner — Role and Functions’, *State Services Commission* (Web Page, 13 August 2015) <<http://www.ssc.govt.nz/sscer>>.

Figure 1: The Policy Cycle⁷⁴



The policy cycle, as illustrated above, provides opportunities for gender to be considered at every stage. In agenda setting, the voices of women could be sought, not merely for ‘engagement’ on something already decided but to raise the issues of relevance to them. Whose view is sought is an important first consideration, as there is a risk that policymakers will only engage with those best known to them. This is likely to lead to a Wellington-centred view, and may benefit from the inclusion of, for example, advocacy and NGO groups. Another consideration is that when the view sought is considered a ‘minority view’, or is delivered by a person who is a minority within a particular group, there is a risk of that view being sidelined. Therefore, it would be important to consider how these views are sought and actioned, to ensure they are given the necessary weight.

Policy formulation can be a collaborative process — with women, not for women. It could include gender analysis of the issue at hand and of the potential policy responses. Adoption and implementation can similarly occur through and with women. This may be especially important from an intersectionality perspective, to ensure policy is implemented in a culturally appropriate manner. Evaluation should include input from those actually impacted by the policies, not just assessment against simple, generic criteria that may not address any underlying systemic issues.

⁷⁴ Based on figure in Christoph Knill and Jale Tosun, ‘Policy Making’ in Daniele Caramani (ed), *Comparative Politics* (Oxford University Press, 2008) 495.

Figure 2: The Budget Process⁷⁵



The budget process, as illustrated above, provides another avenue for considering gender issues, in the form of gender budgeting or gender-responsive budgeting. It analyses government expenditure and fiscal policy to promote gender equality, and consists of many tasks. Gender budgeting is becoming common around the world, supported by the OECD, the United Nations, the International Labour Organization and the International Monetary Fund. It can involve *ex ante*, concurrent, and *ex post* activities to provide gender analysis, perspective, incidence analysis and audit. A common output is a Gender Statement, either as part of the official Budget documents if undertaken by the government, as in Canada, or independently created and issued, as in Australia and the UK.⁷⁶

The 2019 national Budget was New Zealand’s first ‘Wellbeing Budget’, the priorities for which were informed by Treasury’s Living Standards Framework.⁷⁷ The Living Standards Framework was developed to help Treasury advise governments on ‘the likely effects of their policy choices on New Zealanders’ living standards over time’.⁷⁸ Gender analysis is essential to understanding the effects of policies on women, and the Wellbeing Budget presented an opportunity to include a Gender Statement in the Budget documents — unfortunately this opportunity was not taken up.

⁷⁵ Sourced from International Monetary Fund, ‘Gender Budgeting in G7 Countries’ (Policy Paper, 19 April 2017) 9.

⁷⁶ Morrissey (n 39) 1, 4, 16.

⁷⁷ ‘The Wellbeing Budget 2019’, *The Treasury* (Web Page, 30 May 2019) <<https://treasury.govt.nz/publications/wellbeing-budget/wellbeing-budget-2019-html>>.

⁷⁸ ‘Living Standards’, *The Treasury* (Web Page, 4 December 2018) <<https://treasury.govt.nz/information-and-services/nz-economy/living-standards>>.

V CONCLUSION

Gender focus was absent from the TWG report. At one level, this is not surprising, as the interaction between the tax and transfer system had been specified as out of scope. However, this places women as low-income earners, who can benefit more from changes to transfers. Another view would see women as potential beneficiaries of a more equitable tax system that taxes earnings from both income and capital, or a tax system that addresses environmental concerns. The TWG made recommendations on both these topics: a capital gains tax will not be progressed; and environmental concerns have been consigned to ‘consider for inclusion on work programme’.⁷⁹ Of the broader set of 99 recommendations, few are likely to have a positive effect on women, and many retain the taxation status quo. Those with higher incomes and wealth continue to benefit from a taxation system without inheritance tax, wealth tax, land tax, gift duty or (last but not least) a capital gains tax.

The background paper on gender lacked depth, and again this is not surprising given the decline in gender analysis skills in the public sector over the last decade. Gender analysis is not required to be undertaken and there is currently no gender reporting in Budget documentation. Gender appears to be absent from policymaking, and from tax policy in particular. This article has shown that tax is not gender neutral and asks whether the traditional criteria used to analyse tax policy remain appropriate in this light. The inadequacy of the conversation about gender in the work of the TWG indicates that gender analysis skills and a critical review of the traditional criteria for tax policy would improve policy generally and tax policy in particular. Perhaps the new focus on wellbeing will assist in that regard.

⁷⁹ New Zealand Government, ‘Government’s Response to the Recommendations of the TWG’ (17 April 2019) <<https://www.beehive.govt.nz/sites/default/files/2019-04/TWG%20Government%20response%20table.pdf>>.